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ABSTRACT

This manual collects experiences of successful linkage programs to demonstrate the promise of linkage and to show its limits and risks. It is intended to help communities assess the capacity of linkage to meet their needs and evaluate the considerable commitment this strategy requires. (In linkage programs, developers who receive community approval and public aid for a development project are required to provide some form of benefit to the community.) Chapter I is an introduction that considers the political and legal implications of linkage, preconditions, and dangers. Chapter II traces the legal background and status of linkage. Chapters III-VII examine the development, implementation, and enforcement of linkage programs providing the following: (1) employment and training opportunities through First Source programs under which employers are asked or required to use the city's employment and training office or community organizations as their first source for job applicants; (2) minority and women-owned business support; (3) affordable housing through housing trust funds; (4) equity participation partnerships; and (5) community facilities and social and human services. Each of the seven chapters is followed by three appendixes that provide references to recommended further readings and technical assistance providers, contain notes on sources used in researching the chapter content, and contain sample documents that are models suitable for adaptation. A list 41 background readings is provided. (YLB)

ED358256

Technical Bulletin

LINKING DEVELOPMENT BENEFITS TO NEIGHBORHOODS: A Manual of Community-Based Strategies

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Linking Development Benefits to Neighborhoods:
A Manual of Community-Based Strategies

Author: Ellen Casale

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Note to the Reader:

Following each chapter you will find an Appendix A, providing references to recommended further readings and technical assistance providers.

Appendix B, after each chapter, contains notes on the sources used in researching the chapter content.

Sample documents are listed in Appendix C of each chapter. These documents, gathered in the course of our research, are excellent models that can be adapted to other communities. The documents can be ordered from the Community Information Exchange; the price of each is listed.

The Community Information Exchange can also provide additional supportive materials on linkage and other community economic development strategies. Exchange staff can suggest useful publications and articles, provide case examples of innovative projects nationwide, refer communities to appropriate technical experts, and offer information on potential funding sources and alternative financing techniques.

CHAPTER I:

INTRODUCTION

Cities enjoying robust economic growth often experience the irony of neglected neighborhoods decaying nearby downtown prosperity. While downtown development may mean a new vitality, more jobs, a healthier budget for the city, and profits for developers, for low-income neighborhood residents, development often results in a higher cost-of-living, a demand for housing and services that dramatically accelerates a rise in property values, jobs paying wages that don't pay the bills, more competition for child care, and displacement and even homelessness brought on by the destruction or upscale conversion of once-affordable housing.

Linkage programs are intended to solve some of these inequities. In exchange for obtaining approval of a development project, some form of benefit to the community is required. Linkage recognizes that developers actually receive public assistance, in forms that may range from infrastructure improvements, to land assemblage achieved by the city's use of eminent domain, to subsidies such as tax increment financing, Urban Development Action Grants, and revenue from tax-exempt financing. They set up a quid pro quo to transfer the benefits of economic growth to low-income communities to coax (or force) developers into doing good while doing well.

Although linkage is often thought of in terms of low-income housing trust funds, linkage strategies that benefit neighborhoods also include developer commitments to hire city residents for jobs created by a project; to provide assistance to minority business; to build neighborhood facilities or provide services such as child care; to include community organizations as equity partners in development projects.

Strategies differ in design, implementation and result. Linkage policies can be voluntary or mandatory; ad hoc or systematic; formal or informal; they can affect all downtown development, or only that which exceeds a specified size, or development that receives public subsidies, or is located within a certain district. Pioneered by major urban centers, linkage programs have been initiated or are under consideration in smaller cities and towns, suburban counties, and state governments. In the early eighties, linkage was a strategy chanced only by booming cities with sophisticated community groups — San Francisco, Boston, Seattle. Today it is a widely used, but widely varied strategy.

Linkage programs are highly controversial, subject to legal challenge, and difficult to implement. Because they require sophistication and cohesion, a long-term commitment and an acceptance of risk on the part of city officials and community groups, linkage programs have, to date, rarely been successful. But most programs

are less than five years old, and entail a fundamental change in the attitudes and behavior of the private and public sectors they attempt to make partners. Many programs are still evolving, adapting to unforeseen obstacles and opportunities. Many others have been virtually abandoned by their original supporters, and are already seen as yet another failed urban program.

Especially suited to cities with healthy development climates, but scarce housing and employment opportunities, linkage offers a new local financial resource in times of massive cuts in federal funding, decreasing State revenue, limited tax bases, and increasingly expensive operating costs. The developers' involvement in neighborhood work can be the opportunity to expand their understanding of neighborhood revitalization, and make them better corporate citizens.

The most effective linkage programs are win-win examples of public/private/community partnerships, where the three sectors work as equals and share in the benefits equally. To communities exploring the possibilities of linkage, programs that have been successful are valuable models, and those that have failed offer warnings and the symptoms of trouble. This manual collects those experiences in hopes of strengthening the hand of communities considering this new strategy, or looking to expand ongoing programs. The material that follows is meant to demonstrate the promise of linkage, but more important, to look realistically at its limits and risks. It is meant to help communities assess the capacity of linkage to meet their needs, and evaluate the considerable commitment this strategy requires. Separate chapters trace the legal background and status of linkage; and examine the development, implementation and enforcement of linkage programs providing employment and training opportunities; minority business support; affordable housing; equity partnerships; and community facilities and services.

POLITICAL IMPLICATIONS

Linkage is politically controversial because it represents a threat to development much sought after by cities competing with one another and with suburban jurisdictions. Furthermore, linkage appears to conflict with other more established incentives; at the same time cities are luring developers with tax-exempt financing, interest subsidies, federal grants, and zoning waivers intended to attract development, they are increasing developer costs and adding conditions through linkage programs. Linkage alters the relationship between city and developer by asking, or requiring, the developer to contribute to a need that may not be directly related, or not related at all, to the success of his project. It is a request, or requirement, that developers can be expected to oppose.

But not always. Increasingly, in cities where anti-growth sentiments are rising, developers are taking the initiative in proposing ad hoc linkage agreements. Offers to hire local workers or create new child care centers are meant to create the public goodwill that can tip land use decisions in a developer's favor. In those cases where developers propose, rather than oppose, concessions, community groups can play a critical role in assuring that important zoning or planning goals are not subverted to the interest of winning precious resources for housing, jobs or social services.

LEGAL IMPLICATIONS

Linkage policies are legally controversial because, unlike traditional suburban development exactions, such as land dedications and fees in lieu of dedication, no clear link exists between the purpose of the exaction and the impact of the development. The absence of a clear link, or **nexus**, leaves any exaction program subject to a court challenge on the grounds that it contravenes Constitutional equal protection and due process requirements.

Suburban communities commonly exact from developers land or fees for the infrastructure and educational facilities necessary to support new development. These communities have, when legally challenged, been required to prove the link between the development and the need for facilities for which the developer is paying.

While linkage programs are based upon the knowledge that low-income neighborhoods are often impervious to the benefits of development,

empirical evidence that they are adversely affected is nearly impossible to gather. Few cities can prove that the funds or services they exact from developers are related to the impact of the development, nor that the level of charges is appropriate to the need created.

In some cities, those who have designed and are running linkage programs know that their programs are constitutionally vulnerable and work to maintain mutually beneficial relationships with developers to pre-empt a court challenge. While this win-win relationship can foster a linkage program, it can also undermine it, primarily because city officials may hesitate to establish or impose penalties for non-compliance.

IMPLICATIONS FOR IMPLEMENTATION: Mandatory and Ad Hoc Linkage

Unanimously, city officials and community leaders interviewed for this manual recognized ad hoc agreements negotiated by representatives of the city, the community, and developers as the most successful linkage efforts. While developers tend to prefer formal policies rather than the unknown stipulations and timeframes of negotiated agreements, their representatives, too, acknowledged the success of ad hoc agreements.

Ad hoc agreements are flexible by definition, and in the most effective projects, remain flexible throughout implementation. Continuing adjustments and compromises are essential to a project that joins the resources of organizations with divergent perspectives and agendas.

PRECONDITIONS

It seems likely that linkage is possible only in cities attractive enough to developers that they will accept an increased cost or burden in return for permission to build. And cities must be willing to take the risk, however minimal, that developers will walk away from a deal that involves concessions to the community. San Francisco and Boston, the most aggressive and successful cities, on behalf of their low-income residents, also enjoy booming downtown development, and populations wary of, if not opposed to, new growth.

In every case where neighborhood organizations have been involved in linkage, it is because certain preconditions exist. First, the neighborhood groups must be financially, professionally and politically capable of exerting pressure and meeting their obligations. They must have competence, a track record, clout, and nerve...and often cash, to serve in a major role.

But equally as important, preconditions must exist in the public sector, opening the door for the organizations to seize the opportunities. A strong commitment by the mayor and city government to involving community groups in development deals is critical to linkage. Public money to leverage the deal and a public statute to require community involvement are elements that have made past linkage projects succeed, according to our research.

Municipal staff and community organizations trying to make linkage programs work repeatedly cite a lack of administrative coordination and effective monitoring and enforcement as the most intractable factors undermining their efforts. These sources see high priority on the Mayoral agenda as the key to administrative coordination, and adequate funding as the key to effective tracking and enforcement.

Because linkage implementation and enforcement is so difficult, community groups and the City must make a strong, sustained commitment to linkage, well beyond enactment, for these programs to be successful.

DANGERS

Linkage is a limited response to the negative impacts of large-scale development, and sometimes even increases the ill effects of development. Groups representing community interests must be concerned about the secrecy of both mandatory and ad hoc linkage deals and the lack of uniformity of agreements. Agreements are nearly always negotiated privately, with no public accountability, and no public input beyond the negotiating table. In a recent Washington, D.C. proposed ad hoc arrangement, the developer's offering shifted from concession to bribery, in his efforts to win the planning approval he sought.

Some community and city leaders who have promoted linkage programs suspect that

development agreements are taking more from low-income communities than they are giving. Short-term gain may mask long-term detriment to a community, such as when a high-rise commercial or luxury building is permitted to loom over a lower-income neighborhood of two-story homes. In suburban Miami, a mammoth office tower is 40% taller than it should have been because, in a linkage deal, the developer agreed to build a large privately owned parking garage.

Linkage contributions that derive from incentive zoning, such as permitting density bonuses, have sometimes been viewed as "zoning for sale." The developers' financial gains may exceed the public benefits derived. The City of Milwaukee, for example, holds that "cities plan carefully and develop a set of guidelines which prescribe an ideal vision of what the central business district should look like. It doesn't make sense to bargain with developers to circumvent those guidelines."

In times of painful fiscal austerity, it is easy to be tempted by what appears generous support for a much-needed community service or facility. Community groups and city officials must have a sound understanding of their long-term and short-term, tangible and intangible objectives before entering negotiations with developers.

Alternatives to linkage programs should also be considered for their benefit to neighborhoods. These would range from growth management to inclusionary zoning, neighborhood participation in the planning and budgeting process,land banking and land trusts, and programs that directly target neighborhood economic revitalization. Since linkage programs, even when well-conceived and successful for the private, public and community sectors, cannot come close to providing the financing needed for affordable housing and other social equity issues, new strategies for increased public and private investment still need to be created.

CHAPTER I: INTRODUCTION
APPENDIX A: RESOURCES

READINGS

Linking Downtown and Neighborhoods: Successful Strategies for Economic Development, by the International Downtown Association; information on places and people for models of neighborhood-downtown cooperation in developing linkage strategies. To be published in 1989; contact IDA, 915 15th St., 9th Fl, Washington, DC; 202/783-4963.

Development Fees: Sharing the Costs of Growth, by James Unger for the National Council for Urban Economic Development Information Service. No. 43, March 1988. This 32-page report reviews the legal, financial and administrative aspects of impact and linkage fees, with emphasis on the establishment and management of fees. $10 for CUED members; $12.50 for non- members. See address below.

Impact Fee Manual, prepared by the National Association of Home Builders for its members, discusses the legal, political and financial issues of impact fees from the developer's perspective, and includes advice for developers on dealing with fees. 100 pgs., available from NAHB, 15th & M St. NW, Washington, DC 20005; $8.00 for members, $15.00 for non-members.

Linked development in U.S. cities: Description of Policy Efforts with a Brief Discussion of Critical Issues by John J. Betancur and Lee Smith of the University of Illinois at Chicago Center for Urban Economic Development. Feb. 1988. General discussion of linkage issues, and brief summaries of 18 linked development programs in cities across the nation. Free. UICUED, Box 4348, Chicago, IL 60680, 312/996-6336.

See also General Background Readings at the end of this manual.

TECHNICAL ASSISTANCE PROVIDERS

Community Information Exchange
1120 G Street, NW
Washington, DC 20005
202/628-2981

In researching materials and models for this manual, the Exchange has compiled a large number of case examples, illustrating the variety of approaches city agencies and community organizations have taken that apply the principles of linkage.

American Planning Association
Headquarters:
1776 Massachusetts. Ave. NW
Washington, DC 20036
202/872-0611

Membership and subscriptions:
1313 E. 60th St.
Chicago, Il 60637
312/955-9100

The American Planning Association, a membership organization open to everyone, is the best source of information about planning and related issues. In addition to *Planning* magazine, the journal of the American Planning Association and their mail order bookstore, their Planning Advisory Service and research department draw upon hundreds of planning reports, zoning ordinances and regulations. The professional staff will research an issue and draw upon its interactions with planners and planning agencies.

National Council for Urban Economic Development
1730 K St., NW
Washington, DC 20006
202/223-4735
Contact: Jeff Hinkle

The National Council for Urban Economic Development (CUED) is a national membership organization for persons working in economic development. It has an extensive publications catalog on all aspects of economic development, including microenterprise, business retention and

expansion. It holds national conferences on economic development issues, and puts out a bi-weekly newsletter and quarterly magazine. CUED will provide technical assistance to practitioners on linkage programs for a fee.

National Economic Development and Law Center
1950 Addison Street
Berkeley, CA 94704
415/548-2600

NEDLC, established in 1969, is a national public interest law and planning center that provides a wide range of technical assistance to community- based organizations. Its services include legal counsel and representation; comprehensive planning assistance, including the creation of strategies that integrate business development, housing, health service delivery, and job creation; business development services, from feasibility studies to loan packaging; training in the basic requirements and strategies of community economic development; and program and resource development (i.e., identifying and gaining access to funding programs).

CHAPTER II:

LEGAL ISSUES

Cities step onto legally shaky ground when they venture into formal linkage programs. The lure of linkage in times of severe budget constraints must be tempered by awareness of the constitutional questions this approach raises. Voluntary, ad hoc linkage agreements are, by their nature, not as vulnerable to court challenge.

That there have been few court tests of linkage programs is due to their newness, and to developers' unwillingness to jeopardize promising enterprises, to forego investments in predevelopment costs, and to withstand the multi-year delays and thousands of dollars legal battles invariably entail. High fees or severe penalties for noncompliance skew the cost/benefit ratio away from developers, and court challenges should be anticipated.

San Francisco's and Boston's linkage programs have survived court tests, but decisions rendered in those cases are not broadly applicable. The substantial case law involving now traditional land use exactions — land dedication, fees in-lieu of dedication, and impact fees — are more valuable predictors of judicial reaction to linkage. Exaction case law points to the importance of a strong nexus between the impact for which the developer is compensating the city, and the amount and type of exaction. Most linkage programs cannot demonstrate a clear nexus, and accordingly, their legal viability is doubtful.

Linkage may be seen as a new phase on the continuum of exactions begun in the thirties with suburban requirements that developers of subdivided residential property dedicate land or pay fees for intra-developmental streets, sidewalks, sewers, power lines and open spaces.

However, because these land dedications and fees often turned out to be inappropriate to support schools and recreation facilities — land being poorly located or fees insufficient — fees in-lieu of dedication were established by local governments hard-pressed to finance public facilities required by booming residential development. Thus, following closely the imposition of dedication requirements, fees in-lieu of dedication came into wide use, and represent the second phase on the continuum of increasing developer contributions to public services.

During the seventies and throughout the eighties, impact fees have extended the continuum of exactions. More flexible than in-lieu fees, they are frequently used to fund infrastructure, education and recreation facilities that are offsite. In other words, they benefit people and places outside of the geographic area where the development is taking place. Calculated on a square foot or per unit basis, they are applicable to condominium, commercial, mixed-use and rental developments, as well as single-family subdivisions.

Linkage programs have clearly evolved from these now widely-used exactions. But linkage programs deviate from other exactions in two significant ways: First, as stated above, they frequently lack a demonstrable nexus between development impact and the type and amount of the imposed payment. Second, linkage programs are intended to benefit an offsite population (for example, low-income people needing housing), whereas dedication, fees in-lieu and impact fees finance services that meet the needs of future residents or users of new development.

Court tests of exactions have repeatedly demonstrated the critical importance of the two-fold nexus between impact and payment, payer and beneficiary. As the nexus grows weaker, exaction programs are increasingly vulnerable to legal challenge. However, the mixed experience of many cities and states in protecting various exaction programs from legal challenge does offer several tips to those drafting linkage proposals. Following their guide will not guarantee a constitutionally sound linkage program, but it will ensure as legally viable a program as possible.

Land dedications have been nearly universally upheld by state courts as a reasonable exercise of the state's police power to regulate development for the public welfare. When challenged judicially, it has usually been on "ultra vires" grounds, that is, that the municipality lacks statutory authority to impose an exaction on the developer. (Statutory authority is granted to local entities via state enabling legislation.) State laws enabling local governments to exact land or fees for intra-developmental improvements also have been declared valid exercises of the police power against challenges that they contravene Constitutional due process protections and protection against the taking of property without just compensation.

Fees in-lieu of dedication and fees to support off-site sewage, water, and transportation improvements have been more vulnerable to judicial challenge because facilities they pay for are frequently located outside the development. Fees have been challenged on ultra vires grounds, as well as grounds that they constitute an unfair tax. When local governments have been unable to demonstrate the link between benefit to a development's residents and their payment, fees have been invalidated as violations of Constitutional guarantees of due process, equal protection, and protection against the taking of property.

The link between impact and payment, beneficiary and payer, is significantly more tenuous for impact fees than for dedications and in-lieu fees. Consequently, impact fees have been more frequently and more successfully challenged in court. As with earlier exaction strategies, courts reviewing impact fee challenges first determine whether adequate state enabling legislation exists. If enabling legislation does exist, the court then seeks to determine whether the exaction is a tax, and looks again for appropriate enabling legislation. Having sustained those two inquiries, the fee is then subject to one of three tests of its reasonableness.

The three tests are, in order of increasing strictness, "reasonable relationship," "rational nexus," and "specifically and uniquely attributable." The "reasonable relationship" test was initiated and has been used most frequently by the California courts. The test requires that the municipality simply demonstrate that it is acting rationally. Florida courts have widely used the "rational nexus" test, which requires that municipalities demonstrate a link between the fee and the impact of development, and that the amount of the fee is proportionate to both development impact and benefit to the payer. This test has become nearly universally accepted by the courts, although there is wide variance in "the tightness of the nexus." (1) Illinois courts have developed by the far the strictest test, which requires that the fee be "specifically and uniquely attributable" to the development. Only Rhode Island uses a similar test. (2)

If the municipality cannot prove a nexus to the court's satisfaction, fees may be ruled an unfair tax, or unfair burden on the developer or owner. The fee may also be ruled a taking of property without just compensation. However, for a taking to occur, the property owner must be denied "all viable economic use" of his property.(3) Consequently, takings rulings are rare.

In 1987, for the first time the U.S. Supreme Court ruled on land-use exactions in Nollan v. California Coastal Commission . (4) The 5-4 majority struck down a Coastal Commission

requirement that the owners of a beachfront home provide an easement across their property to compensate for the impaired visibility and "psychological barrier" to the shore resulting from a new home on the lot, nearly twice the size of the cottage it was to replace. The easement, along the shoreline, was intended to facilitate access between two public beaches located nearby the Nollan property.

Justice Scalia, writing for the majority, affirmed that the local government's power to regulate development on the basis of its police power also gives the government authority to exact concessions which will further its objectives in protecting the public welfare; and he affirmed that the range of legitimate public purposes is broad. However, he argued that concessions are valid only if they advance an end which would have justified prohibition of the development. That is, "unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but 'an out-and-out plan of extortion.'" When the "essential nexus" between the condition and the reason for banning development is eliminated, "the situation becomes the same as if California law forbade shouting fire in a crowded theater, but granted dispensations to those willing to contribute $100 to the state treasury." (5)

Justice Scalia could not see how a lateral easement for persons already on the beach would reduce the barriers to visual and psychological access the Nollans' house raised. Although access to the shore may be in the public interest, he argued, "that does not establish that the Nollans ... alone can be compelled to contribute to its realization. Rather, California is free to advance its ... 'comprehensive program' ... but if it wants an easement across the Nollans' property, it must pay for it." (6)

Land use experts are divided as to the impact and the scope of Nollan. While the Court has acknowledged "the broad range of governmental purposes" for which development concessions may be applicable, it has severely tightened the nexus which links development concessions to public purposes. (7) Nollan makes clear the importance of documenting the impact of development, and establishing a clear relationship between the type and amount of concession exacted. This case, and the case law on exactions which precedes it, do indicate several measures which can be taken to strengthen the legal viability of a linkage program:

1. To demonstrate a nexus, local governments and community groups must compile accurate, timely documentation on current needs to be met with linkage funds. Needs assessments should compare current and anticipated needs, review ongoing services and facilities, and estimate revenues resulting from the planned development.

2. To strengthen the nexus, a formula should be devised to calculate an appropriate fee, or rate of fee, based upon the expected impact of the development, and anticipated needs. Formulas for direct services or construction, and financial contributions, should be designed. (See appendices.)

3. Community groups and local governments should draft and lobby for state enabling legislation to expressly authorize the municipal government to impose fees for off-site public improvements as a condition for permission to build or put a facility in service.

4. Funds collected from developers should be earmarked for the use specified by the linkage program, deposited in a segregated account, reported at regular intervals, and used for no other purpose.

5. Explicit timeframes should be established for the expenditure of funds, and provisions made for the timely refund of unspent monies.

As noted earlier, ad hoc programs are not similarly threatened by legal challenges. But ad hoc programs involve a different set of fundamental legal issues: A range of legal tools, including requirements for the granting of public financial assistance, zoning restrictions, central plans, and formal exaction programs are the bargaining chips used by community groups and cities to deal neighborhoods into development projects. Without these tools, and the waivers they imply, community groups bring little of value to the bargaining table. (8)

The enactment of such tools may be an essential precondition for ad hoc agreements. But when enacted, or strengthened, for the purpose of amassing bargaining chips, they pose

a serious threat to neighborhoods, because they offer the illusion of development control, but not the reality. Expanding regulations with the intention of selling waivers barely protects the public interest, because waivers are granted for land use controls that the city has never really established. (9) And the fact that ad hoc negotiations are nearly always conducted secretly, with no oversight or appeal, leaves the rights and interests of developer, neighborhood and city subject to negotiation conducted under circumstances that are seldom, if ever, fair.

CHAPTER II: LEGAL ISSUES
APPENDIX A: RESOURCES

READINGS

See *Development Fees: Sharing the Costs of Growth*; and *Impact Fee Manual*, described in Appendix A of Chapter I, Introduction.

Revisiting the Law of Regulatory Takings: The Supreme Court's Decisions in Keystone, Nollan, and First English by Robert Meltz, Legislative Attorney for the Congressional Research Service. This 33-page report summarizes and compares the three 1987 Supreme Court decisions concerning land use. Meltz analyzes the impact of the cases, and anticipates local and federal response. The report was prepared for Congress December 1, 1987. Free. Request from Members of Congress.

Journal of Law and Contemporary Problems, Winter 1987, Special Issue on Linkage. A valuable collection of articles which includes discussion of the legal history of exactions, current legal status of various exaction methods, and the implications for impact fees and linkage programs.

TECHNICAL ASSISTANCE PROVIDERS

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For a description of MBELDEF, see Chapter IV of this Manual, Minority and Women Enterprise Development.

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1950 Addison Street
Berkeley, California 94704
(415) 548-2600

See description in Appendix A of Chapter I, Introduction.

CHAPTER II: LEGAL ISSUES
APPENDIX B: NOTES

1. Jerold S. Kayden and Robert Pollard, "Linkage Ordinances and Traditional Exactions Analysis: The Connection Between Office Development and Housing," *Law and Contemporary Problems*, 50 (Winter 1987), p. 127.

2. Marlin R. Smith, "From Subdivision Improvement Requirements to Community Benefit Assessments and Linkage Payments: A Brief History of Land Development Exactions", *Law and Contemporary Problems*, 50 (Winter 1987), p. 13.

3. *Agins v. Tiburon*, 447 U.S. 255, 260 (1980) cited in: *Nollan et ux v. California Coastal Commission*, 86-133 (U.S.), p.&

4. John J. Delaney, "Exactions After Nollan," *Urban Land*, October 1987, p. 34.

5. *Nollan et ux v. California Coastal Commission*, 86-133 (U.S.), p. 11.

6. Ibid., pp. 15-16.

7. Ibid., pp. 8-9.

8. Interview with Kim Zalent, Chicago Workshop on Economic Development, Chicago, IL, 23 Sept., 1988.

9. William A. Fischel, "The Economics of Land Use Exactions: A Property Rights Analysis," *Law and Contemporary Problems*, 50 (Winter 1987), p. 106.

CHAPTER II: LEGAL ISSUES
APPENDIX C: DOCUMENTS

1. SUMMARY OF THE ECONOMIC BASIS FOR AN OFFICE-HOUSING PRODUCTION PROGRAM

Prepared by Recht Hausrath & Associates, Oakland, CA for San Fransisco Department of City Planning, July 19, 1984, 15 pgs.,$10.00.

2. "Establishing and Administering Development Fee Systems," pages 9-15 of the March 1988 report, *Development Fees: Sharing the Costs of Growth*, published by the National Council for Urban Economic Development, reprinted with permission from CUED, $2.00.

These documents are available from the Community Information Exchange.

CHAPTER III:

FIRST SOURCE HIRING

Under First Source programs, employers are asked, or required, to use the city's employment and training office, or community organizations, as their first source for job applicants. Perhaps more than any other linked development strategy, First Source programs convey direct economic benefits from development projects to low-income individuals, by redistributing to unemployed or disadvantaged city residents a share of the job opportunities created by commercial development.

Over one dozen cities have established formal First Source programs either through executive order or municipal ordinance. All those we reviewed apply only to publicly-subsidized development or employers with other city contracts. Few include sanctions for noncompliance; even less common is the enforcement of sanctions. Nearly all programs cover only permanent entry-level jobs, and are not applicable to higher paying construction and permanent professional positions. Despite the relative simplicity of formal First Source programs, job placement results have been nearly universally disappointing. More promising are ad hoc agreements negotiated between community organizations and developers, or through triangular negotiations involving the city. The strengths of ad hoc agreements — flexibility and close monitoring — are often the weaknesses of formal programs.

BACKGROUND

In 1979 Portland Mayor Neil Goldschmidt signed that city's, and the nation's, initial First Source hiring agreement. Since then, preferential hiring initiatives related to new development have been promoted in nearly every major city. However, cities are subject to legal and constitutional prohibitions against interference in commerce and discrimination in hiring, and so have been slow to face off with the labor unions, local businesses and developers who are usually strongly opposed to local hiring restrictions.

First Source strategies range from Boston's Residents' Jobs Policy, which expressly lists the percentages of women and minority residents to be hired by construction contractors and threatens the loss of City contracts for non-compliance; to the District of Columbia's First Source, which requires that all employers fill 51 percent of jobs related to District contracts with D.C. residents and threatens termination of the contract; to Chicago First, which simply requires employers to contact the Mayor's Employment and Training Office before opening permanent jobs to the public, and includes no sanctions.

Programs are variously designed to benefit all city residents, low-income residents, the unemployed, and/or women and minorities. Job

opportunities affected by municipal action are generally limited to permanent entry-level jobs created by publicly subsidized development. Training is not usually included in programs providing access to entry-level jobs, because it is assumed that only very basic work skills are required. Also, affirmative action goals often written into public job placement agreements are usually absent from First Source programs covering entry-level jobs, because women and minorities seldom encounter discrimination in hiring for entry-level, minimum-wage work.

While high-paying construction jobs are the plums of development-created employment, community organizations have been reluctant to push for First Source construction jobs ordinances, because they are legally and politically more complex and problematic than ordinances affecting permanent jobs. Hiring preferences affecting construction jobs entail assaults on collective bargaining agreements, historical trade union discrimination against women and minorities, and the strong opposition of unions and business. Frequently they require a training or apprenticeship component, but provisions for training can bolster opponents' argument that minority and women workers are not currently hired because they do not have the necessary skills. And administratively, they require tracking participants through a complex hiring process: hours rather than placements must be counted because many construction trades work short-term; and workers must be followed over erratic schedules at multiple sites. Thus with reason, community groups often consider the enactment of legislation covering construction jobs as the battle to follow the establishment of a successful permanent jobs program.

LEGAL ISSUES

In 1983, the U.S. Supreme Court overturned a Massachusetts Supreme Court decision declaring Boston's First Source Executive Order unconstitutional. The Order required that 50 percent of all workers on publicly-subsidized building projects be residents of Boston, 25 percent minorities, and 10 percent women. The Supreme Court held that the Order did not violate the Commerce Clause of the Constitution, which prohibits States and localities from interfering in interstate commerce.

In 1984, the Supreme Court ruled that a similar Camden, New Jersey ordinance may violate the Privileges and Immunities Clause, which prohibits cities and states from discriminating against non-residents. The Court remanded the case back to the New Jersey Superior Court for review. Because the case was settled out-of-court, and there has been no similar case, this constitutional question is still unresolved. (1)

SETTING

First Source programs are feasible for a city experiencing high rates of unemployment and brisk development if there is a match between the skills and needs of the local labor force and the jobs created by development. In many northern cities manufacturing industries have been eclipsed by the service sector. Financial, insurance, retail, tourist industries now dominate, and offer only low-paying, unskilled jobs to skilled industrial workers accustomed to middle-income wages. These workers are unsuited to minimum-wage entry-level jobs, and are frequently unwilling to consider them. Those who are unemployed because they lack the most rudimentary job skills are also unsuited to a First Source program dealing with service industry employers, unless the program includes a job-readiness training component. As one observer put it, "Employers want middle-class behavior, but won't pay middle-class salaries." (2)

Instead, a First Source program setting aside entry-level minimum wage jobs is most appropriate where there is an unskilled, but job-ready population. Job-ready describes those workers who, however inexperienced, can meet the basic requirements of personal responsibility asked of all employees, and are willing to work for low wages. Where most unemployed workers are not job-ready, the City must be willing to commit resources to a training program that can prepare them for work, if it is to serve as an effective first source for employers looking to fill job vacancies.

ADMINISTRATIVE SUPPORT

First Source programs require the cooperation of city departments negotiating with developers — planning, economic development, public works — and the department responsible for employment services. This interdepartmental cooperation requires that municipal staff recognize the First Source program as a high priority on the Mayor's agenda. Otherwise, development contracts and permits will be negotiated without consideration of First Source requirements.

Many community leaders believe that hiring restrictions should be on the table throughout project negotiations, so that the quid pro quo of public assistance or waivers for hiring concessions is clear, as is the City's commitment to securing jobs for residents. Many also believe that staff administering the First Source program should work not from the employment services agency, but from the Mayor's Office, to be in a position to coordinate an interdepartmental effort. Clearly, strong support from the Mayor is key to a successful First Source program. Accordingly, those programs enacted over the Mayor's opposition or without his strong support are unlikely to be effective.

IMPLEMENTATION OF FORMAL PROGRAMS

Organizing

First Source programs have been enacted both by using community organizing techniques in confrontational, heated political atmospheres and through rational, cooperative, broad-based efforts.

Local ACORN groups have won enactment of First Source programs in five of the twelve cities where they have tried. (ACORN is a nationwide network of grassroots economic justice lobbying organizations.) The method is similar in each city, and the ordinances, by ACORN's description, are "boilerplate." Initially ACORN organizes unemployed workers, and orchestrates an "action," or series of actions, against a major developer or other employer who has received city-administered assistance. This public confrontation, when successful, quickly brings the contradiction of local unemployment in the shadows of downtown development onto the public agenda. The unresponsiveness of publicly-subsidized developers to the community is a simple, symbolic issue of fairness, readily attractive to local press. At the same time, ACORN identifies City Council members willing to introduce and manage a First Source bill through the legislative process. Where there is Mayoral support, an Executive Order may implement First Source expeditiously, making projects targeted in the public action subject to new hiring requirements. Enactment of a municipal ordinance institutionalizes the policy.

Lobbying for Chicago First was coordinated by the Chicago Jobs Council (CJC), an umbrella organization of community-based groups involved in employment and training. The CJC worked for five years to research, draft and promote its proposal. Mayor Harold Washington campaigned on the First Source issue, and after his election, members of his staff and the Employment and Training Office joined a task force comprised of neighborhood groups, women's, civic, and minority groups to draft a proposal. The task force proposal was adopted by a policy committee appointed by the Mayor's Office, representing the original task force members, business and labor groups — a panel described as "a typical Blue Ribbon Committee" by a consultant to the CJC. (3) The program was introduced in January 1987 by Executive Order.

First Source programs require a broad education campaign that reaches business, developers, unemployed and disadvantaged workers, and city administrators. Everyone must be clear about the objectives of the program: Is it intended to help all unemployed workers? All minority and women workers? Only those with basic work skills? Are the ancillary services essential to the working poor — transportation, child care — available? Will the program provide minimum-wage entry-level jobs or well-paying construction jobs? Who has hiring authority? Are temporary jobs as well as permanent jobs covered? Is the program a short- or long-term solution to the city's employment problems? It is critical to a program's effectiveness that both employees and employers understand its nature. Otherwise, disappointment will drain the

program's credibility, and frustrated workers, and public and private employment staff, will return to old habits.

Negotiating

The administration of First Source programs is fragmented. This fragmentation works to the advantage and to the disadvantage of the program. Typically, the recruitment, screening and referral processes that make up program operations are administered by the Employment and Training Office. Hiring agreements, however, are put together by the departments negotiating development contracts: planning, economic development, public works. Hiring agreements are then included in the development package, and monitoring of hiring compliance is generally assigned to the Employment and Training Office. But the enforcement of sanctions — the termination or denial of contracts — is the authority of the negotiating department.

Undoubtedly, the Employment and Training Office is best suited to recruit, screen and refer job applicants to employers. Effective, timely screening and referral have the potential to make a First Source program self-enforcing, particularly when employers are experiencing difficulty filling job openings. (4) An incompetent referral process can undo the program more quickly than any other weakness.

Contract negotiation, however, should not be left to department staff whose priorities do not include the hiring of low-income, minority, or unemployed workers. Because this is often the case, First Source programs end up being tacked onto contracts as just another assurance to be signed off before public assistance is granted. And the larger the project, the less likely First Source agreements will be viewed as a key commitment made by either the developer or the city, unless they are an integral part of the negotiations throughout.

Monitoring And Enforcement

Monitoring the effectiveness of the referral process is relatively easy, requiring simple tracking of those referred through the hiring process, with follow-up after an agreed upon length of time. Feedback on hiring results can help both the employer in placing his job order with the city, and the city employment and training staff in screening applicants. Whether carried out formally or informally, monitoring of the referral process should be ongoing.

Monitoring of workers after hiring is equally important, yet extremely difficult. Private sector employers are unaccustomed to employee tracking that public and nonprofit employment offices have come to accept as routine. But following-up on job placements would be difficult even if employers had institutionalized employee tracking systems: After the initial round of hiring, jobs covered by First Source agreements are hard to distinguish from other openings. Turnover is likely to be high. In addition, placements meeting First Source criteria, but not made through the First Source office are seldom tracked, so that errors in the total of successful placements can be either positive or negative.

Community groups that have worked to implement a First Source program believe monitoring and enforcement to be essential to the program's strength, but funding for these critical program components has not been available in any of the programs we researched. Furthermore, we found not a single instance in which sanctions had been invoked for non-compliance.

Given adequate funding, all community group representatives we interviewed expressed interest in contracting for program monitoring and evaluation. Without city funding for this effort, groups instead work to keep the issue on the public agenda by investigating individual projects or gathering anecdotal evidence, and publicizing their findings. In this way, First Source advocates rely on negative publicity and community pressure to enforce the program, but without much confidence.

Although in most cities First Source programs are too new to have generated valid data, community leaders suspect that programs are not working. Ultimately, First Source programs are subjugated to other economic development priorities, and in times of tight public budgets, these programs inevitably lack the funds essential to effective administration.

AD HOC PROGRAMS

As with other linked development strategies, ad hoc programs seem to work best. Ad hoc programs are usually based upon good faith hiring agreements won by organizations operating in the community in which the developer plans to locate. Community groups negotiate directly with the developer, or take part in three-way negotiations including the city. Invariably, the community group comes to the bargaining table with chips that are valuable to the developer. The group uses its chips, such as site control or political influence, to leverage hiring concessions from the developer in turn for recruitment, screening and referral of neighborhood or city residents. Training may also be part of the deal, and may be provided by either the community group or the employer, funded by either the employer or the city's Job Training Partnership program.

It may be that the ability to recruit and screen potential employees is the chip the community group holds, especially if the employer is new to the locale, and must fill a high number of low-paying jobs unattractive to job-ready applicants. Major tourist and retail businesses are most likely to value hiring assistance. Some community groups have tried to negotiate agreements under which the developer/employer pays the group to carry out this service. As with formal programs, the capacity of the community organization to provide suitable, timely referrals is key to the success of the program, as is regular monitoring. In these cases, monitoring may be done informally, with sanctions coming in the form of public ill feeling, boycotts, and other forms of pressure the community group can organize, or threaten.

SUMMARY

First Source programs are riddled with ironies:

1. While the program is relatively easy to bring to the public agenda because it can be presented as a simple, evocative issue of fairness with a clearcut solution, it is actually very difficult to coordinate and enforce.

2. First Source objectives complement many federal, state and local directives intended to include low-income residents in economic development efforts; however, the constitutionality of this strategy is not yet assured.

3. First Source programs are intended to reach out to those populations unlikely to benefit from downtown development. However, the importance of referrals matched to the needs of employers, who prefer "middle-class" workers, precludes the involvement of the hardcore unemployed the program is meant to serve.

4. First Source Hiring programs can assure disadvantaged workers direct access to jobs they might not otherwise find open to them, particularly well-paying construction jobs. But programs covering construction jobs are rarely attempted because they are difficult to enact, given the usual opposition from labor and business; because they require detailed job definitions and measurements of time worked; tracking hours worked rather than workers placed; and strong sanctions to overcome historic discrimination against women and minority workers. Moreover, the necessary sanctions leave the program vulnerable to legal challenge.

First Source is a strategy that holds promise for city workers, but it has yet to be realized as a means of sharing development benefits. Although it is straightforward in the responsibilities it assigns both city and developer, the complexity of interdepartmental implementation, the monitoring needed to enforce the program, and the reluctance of cities to impose sanctions on developers represent significant hurdles. These factors make necessary strong, long-term commitment from the Mayor, and years of work by community organizations to assure that the program remains a priority until reformed hiring practices become business as usual.

FIRST SOURCE HIRING CONCESSIONS: CASE EXAMPLE

Clay Hill and North End, Inc.(CHANE), a neighborhood organization in Hartford, Connecticut, was able to negotiate an effective first source hiring agreement directly with the national chain of Zayre for jobs at the retail-wholesale warehouse facility that Zayre constructed in the city. The facility is located in a

commercial/industrial area adjacent to CHANE's residential section.

CHANE's ability to leverage this concession rested on two issues. The first was, that Zayre's request to use a parcel of city-owned land for this facility had met with little enthusiasm among city officials. The second was, that Zayre was competing with a national food chain for the market in Hartford for bulk foods. The competing chain had lined up substantial political support, so that CHANE's own ability to sway city council members became a bargaining chip. In addition, Zayre had no knowledge of the employment market in Hartford, and had to rely on CHANE for its expertise.

As Eddie Perez, CHANE's executive director, says, "On any day, we have five friends (out of the nine members) on the city council." CHANE has used neighborhood organizing tactics to accomplish this influence, such as driving 200 neighborhood residents to the city council for hearings on the Zayre proposal.

Zayre and CHANE worked out an agreement in advance, so that when unfriendly city councillors raised questions, CHANE had good answers ready. Eddie Perez says, "Zayre needed us more than we needed them."

The agreement reached between Zayre and CHANE called for CHANE to be the agent for screening and identifying a pool of employees. (The agreement was also supposed to provide city-funded job training, but instead job-ready employees were selected.)

After CHANE made the initial selection, Zayre tried to hire additional employees on the open market. But since their jobs are entry-level jobs in sales, paying only $5 to $7/hour, Zayre found it impossible to locate workers. They went back to CHANE for additional assistance, and, through CHANE, opened the employee selection process to participation by all nonprofits in the city.

Out of the 120 resulting jobs, 38 came directly from CHANE's job bank; forty came from CHANE's geographic area, and are 80% minority. A total of 102 employees are city residents.

Organization: Clay Hill and North End, Inc. (CHANE)
525 Main St.
Hartford, CT 06120
203/525-0190

CHAPTER III: FIRST SOURCE HIRING
APPENDIX A: RESOURCES

READINGS

"Leveraging Development Dollars With Business and Jobs Targeting", article published in *Resources for Community-Based Economic Development*, January 1984. The article discusses "Joint Incentive Marketing," that is, the marketing of public subsidies or waivers with employment and training programs, and reviews the steps that make this strategy work. Also covered are hiring agreements, businesses spin-offs, affirmative procurement practices. Case studies are briefly summarized. 4 pages. Available from the Community Information Exchange; $1.50.

Economic Development and Employment/Training Linkages: Devising Strategies, Overcoming Obstacles by Bradly H. Winnick. Published in 1985 by the National Council for Urban Economic Development. This 20 page publication focuses on the coordination of First Source Hiring and Job Training Partnership Act programs. Available from CUED, 1730 K Street, N.W., Washington, D.C. 20006. (202) 223-4735, $13.50.

TECHNICAL ASSISTANCE PROVIDERS

ACORN
1024 Elysian Fields
New Orleans, LA 70117
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Acorn (Association of Community Organizations for Reform Now) is a coalition of neighborhood organizations of low and moderate income people, with membership in 26 states and the District of Columbia, involved in advocacy and organizing for issues ranging from improving homesteading and lowering utility rates to redlining and voter registration.

CHAPTER III: FIRST SOURCE HIRING
APPENDIX B: NOTES

1. Carl Van Horn, et al., "Leveraging Development Dollars With Business and Jobs Targeting," *Resources for Community-Based Economic Development*, January, 1984, pp. 1-2.

2. Interview with Ed Gramlich, Center for Community Change, Washington, DC, 7 April 1988.

3. Interview with Day Piercy, consultant to the Chicago Jobs Council, Chicago, Illinois, 1 February 1988.

4. Carl Van Horn, et al., "Leveraging Development Dollars With Business and Jobs Targeting," *Resources for Community-Based Economic Development*, January 1984, p. 2.

CHAPTER III: FIRST SOURCE HIRING
APPENDIX C: DOCUMENTS

1. Chicago Jobs Council's Role in Advocating for Jobs for the Poor. Summary of CUC's role and the process involved in enacting Chicago's First Source Hiring ordinance, 5 pages, $4.00.

2. District of Columbia Mayor's Order 83-255 enacts a First Source Hiring Ordinance, 2 pages, $2.50.

3. District of Columbia's First Source Hiring Employment Agreement. Administrative documents; agreements between the city and employing corporation, 3 pages, $2.50.

4. Excerpts from Boston's Residents Jobs Program Ordinance and Compliance Documents. Covers construction projects; includes monitoring and enforcement forms and instructions, 9 pages, $7.50.

5. ACORN First Source Hiring Model Ordinance, 2 pages, $2.50.

6. Office of Management & Budget (OMB) Form; excellent sample tracking document to track minority participation, 1 page, $2.50.

7. CHANE's Job Training & Employment Agreement. Formal agreement between CHANE (Hartford, CT. neighborhood organization) and a corporation, calling the first source job training and employment of city residents at the corporation's facility, 4 pages, $4.00.

All of these documents are available from Community Information Exchange.

CHAPTER IV:

MINORITY AND WOMEN ENTERPRISE DEVELOPMENT

Although over 160 local governments have established programs to assist minority- and women-owned enterprises, (M/WBEs), these programs are rarely used to assure M/WBEs effective roles in the construction and utilization of new development. However, where minority programs are used for this purpose, the results are so impressive as to be worth serious review by communities considering linkage programs. Atlanta, the District of Columbia, Houston, and the State of Massachusetts have in place programs that have been highly successful in assuring minority business participation in development projects.

M/WBE programs, via Executive Order or municipal ordinance, set dollar goals for the participation of minority- and women-owned businesses in city-funded or city-administered contracts. Goals are met by setting aside certain contracting opportunities for M/WBEs, and/or by providing financial and technical assistance, and rating preferences to M/WBEs to improve their competitiveness with majority-owned, established contractors. Often bids are "discounted" for M/WBE applicants, that is, 10-15 percent is subtracted from the bid's estimate. Less frequently, contracting requirements are waived so that a non-competitive contract may be negotiated with a minority-owned firm. Also, discounts and other incentives may be provided for joint ventures between majority- and minority-owned contractors. (1) In commercial real estate, M/WBE efforts may also involve the set-aside of floor space or vendor contracts for minority firms. Successful M/WBE programs generally combine several strategies to meet minority participation goals.

BACKGROUND

While many local M/WBE programs were initiated 10-20 years ago in response to federal civil rights requirements, and generally do not entail a cash concession from developers or other city contractors, these programs do ask or require significant concessions in city contractors' operating procedures. They can be effective vehicles for conveying development benefits to disadvantaged individuals and businesses.

It is common for M/WBE programs to undergo a maturation process, that is, they are often initiated on a limited scale, and expand in response to the needs of their participants, and the priority given the program by the city. Community groups are ideal facilitators of this expansion, in the interest of including M/WBEs in lucrative development projects.

Unlike other linkage programs, ad hoc minority enterprise efforts do not appear more likely to succeed than formal programs. Both require comprehensive, long-term services

addressing financial and managerial obstacles to small business success. Mobilization of the substantial resources needed to foster new minority-owned businesses may in fact be more likely on a city-wide, rather than a single project, level. At either level, successful M/WBE programs require a broad-based, well-funded, long-term effort to recruit, identify, finance, and provide management assistance to new business owners.

M/WBE programs require a healthy, expanding economy to survive their early implementation. Once established, formal programs, such as Houston's, can weather severe economic downturns. Ad hoc programs do not appear as resilient.

Twenty years ago the Kerner Commission, appointed by President Johnson to investigate the causes of the 1967 inner-city riots, condemned the exclusion of minorities from meaningful participation in the Nation's social and economic life. Since then, myriad federal administrative and legislative measures have been promulgated to boost the development of minority- and women-owned businesses. Typically, federal programs set specific minority participation requirements for federal contract compliance. While commitment to these goals varies greatly, federal requirements have invariably been the catalysts for local minority enterprise programs.

Frequently cities introducing a minority enterprise program adopt federal goals and house the program in the local agency responsible for administering the federal grant or contract that spurred the program. Usually, the M/WBE program is subsequently expanded to offer services necessary to meet minority participation goals, including bonding assistance, accessibility to working and equity capital, and technical assistance in the preparation of bids and reporting materials. (2) The U.S. Small Business Administration is usually tapped for financial and technical assistance, most notably, small business loan guarantees.

In the last decade, the number and scope of M/WBE programs have expanded dramatically. However, the development of new programs and the expansion of existing ones is now essentially frozen pending the U.S. Supreme Court's decision in the case of J.A. Croson v. Richmond, a challenge to the legality of Richmond's minority business set-aside program.

M/WBE programs vary considerably in strategy and scope. The use of set-asides, as in the Richmond case, has become increasingly controversial, with many local governments opting instead for more flexible means of meeting minority participation goals or objectives. Set-asides exclude from certain bid solicitations majority-owned or well-established small businesses. They provide a sheltered market in which M/WBEs are competing only with one another, or are not competing at all. More flexible programs allow minority contractors to compete with majority-owned contractors, and provide a range of tools to improve their competitiveness. Tools include working capital loan funds, bonding assistance or waivers, and assistance in the preparation of estimates and bids. It is important to note that M/WBE programs are typically structured to make subcontracting opportunities accessible to M/WBEs. Minority businesses are rarely prime contractors.

LEGAL ISSUES

This year the Supreme Court in J.A. Croson vs. the City of Richmond declared unconstitutional the City of Richmond's M/BWE set-aside program. Richmond's ordinance set aside 30% of the city's contracts for minority businesses. The Court concurred with the Fourth Circuit Court's 1987 ruling that Richmond has failed to prove sufficient historic discrimination to justify the scope of its ordinance, and that the program was not appropriately framed to meet its remedial purpose. (3)

Richmond was the first case the Supreme Court heard involving the legality of a local minority contracting program. (4) Several legal challenges to local M/WBE programs are pending in federal and state courts. These challenges have had the effect of slowing implementation or enactment of new or expanded minority contracting programs.

While the impact of the Supreme Court's decision in Croson is not yet clear, it is likely that local governments wanting to support disadvantaged businesses will turn to financial

and technical assistance and prime contractor incentives as strategies for helping minority businesses. The City of Houston offers a highly effective minority business program which does not include minority set-asides as part of its comprehensive package.

Probably the most essential, most obvious and least controllable contributor to the successful enactment and implementation of a minority contracting program is the state of the local economy. The most effective M/WBE programs have been initiated in areas with robust economic growth.

Substantial public and private financial assistance is also essential to a successful program. Minority firms, as are other small businesses, are almost always under-capitalized and under-collateralized. Those involved in construction, particularly, face difficulty in affording bonding. In addition, most small firms lack the capital needed to keep a project going until the first invoice is paid. Many communities have established loan funds, frequently capitalized with CDBG dollars, to assist M/WBEs in meeting bonding requirements and daily cash flow needs. City commitment to the program sufficient to provide a comprehensive network of assistance is key to a successful M/WBE program. Also critical is extensive outreach to recruit and identify potential minority entrepreneurs, and convince them of the legitimacy and viability of the program. Key program services include technical assistance in city contracting processes, preparation of estimates and filing of bids; assistance in the development of relationships with commercial lenders and in meeting the requirements of public assistance programs. Local non-profits, particularly minority Chambers of Commerce and community colleges, have been effective in meeting these program requirements.

Certain industries, including the construction industry, have historically shut out minorities. M/WBE expertise in industries that have discriminated against minorities is likely to be scarce. Goals for these industries must be set so as to redress past discrimination while assuring an adequate number of minority contractors with proficiency to meet contract requirements. An insufficient number of minority firms can result in a program watered down with frequent waivers.

IMPLEMENTATION

Organizing

As noted earlier, over 160 local governments have in place formal M/WBE programs. All were initiated, at least in part, in response to federal guidelines specifying levels of minority participation in federal contracting. The enactment of new programs, program revisions or expansion is usually the result of the work of local umbrella organizations representing minority businesses. Especially when the Mayor is a member of a minority group, the umbrella organization is likely to have relatively good access to the Mayor and top Administrative staff. Often the organization uses studies of minority participation in city contracting released by local or national minority organizations to strengthen its case that M/WBE programs should be established or strengthened.

M/WBE ordinances and revisions are probably the most politically palatable of development concessions, particularly when they do not involve contracting set-asides. The most probable opponent is the local arm of Associated General Contractors, or other associations of local contractors. Developers and their umbrella groups are generally not supportive of M/WBE programs, although given their interest in maintaining good public relations, and given feasible minority participation levels, they are unlikely to publicly oppose M/WBE measures.

Negotiation

While issuance of an M/WBE Executive Order or passage of a municipal ordinance may be winnable, enactment of a program generous enough to be successful is likely to difficult. But as one developer said, "Minority ordinances and goals only create frustration unless there is a process in place to make them happen." (5) That process must be comprehensive, and is costly. The following program recommendations are taken from the experiences of cities and states that have administered M/WBE programs that have been successful in including minority businesses in development projects. The

recommendations are based largely upon interviews with James Dausch of The Rouse Company; Valentin de la Rosa of the City of Houston; Franklin Lee of the Minority Business Enterprise Legal Defense and Education Fund; and Ralph Thomas of the National Association of Minority Contractors:

1. PROGRAM GOALS

Whatever strategy or strategy mix is agreed upon, goals must be realistic, given the level of contracting opportunity, the types of contracts anticipated, and the M/WBE population. An overall city goal should be set annually, with sub-goals specified for each service area. Optimally, project by project goals will be determined under this umbrella. Contracts should be disassembled with an eye toward which pieces can be subcontracted to M/WBE firms. Based upon the availability of proficient M/WBE firms, goals for a service included in the contract should be adjusted either above or below the overall goal. (Many cities adjust goals only to lower them.) Goals for each contract should be announced when the contract is put out for bid. Good faith efforts to meet the minority participation goals should be required of prime contractors, with the steps to be taken to meet the good faith requirement specified in the contract. Set-asides should be used only when there are enough qualified M/WBE vendors to assure successful completion of the contract.

2. OUTREACH

Concerted effort to reach minority and women business owners, and potential owners, must be undertaken to establish a broad, qualified base of M/WBEs. Many cities compile directories of M/WBEs, categorizing them by type of service provided. Directories should be computerized, updated monthly, and freely available. Relationships with organizations representing minority and majority businesses should be developed and maintained. Bid solicitations, program announcements and other relevant material should be made available to minority and women's organizations and publications. Seminars and workshops introducing the program and city contracting processes should be held frequently, cosponsored by organizations with credibility among the targeted communities.

3. FINANCIAL ASSISTANCE

Assistance in acquiring bonding and working capital should be available from public or private sources. Many state and local programs provide bonding guarantees, and grant bonding waivers to M/WBEs when there is little risk. Revolving loan funds providing the working capital that maintains project operations until the first invoice is paid (often 60-90 days from start-up) are often capitalized with CDBG funds. Prompt payment provisions should be included in contracts whenever possible, with an expedited billing process in place for M/WBE contractors. Assistance in establishing relationships with commercial lenders should be available, as well as assistance in evaluating the feasibility of financing packages.

4. ADMINISTRATION

All aspects of the M/WBE program should be centralized, preferably in the Office of the Mayor. Outreach, training and certification of M/WBEs, financial and technical assistance, determination of goals, project monitoring and enforcement should be managed from a common office. Otherwise the program is likely to be widely fragmented, and program goals are likely to be subjugated to other political and administrative contingencies.

5. MAJORITY CONTRACTORS

To the extent possible, program planners and administrators should cooperate with majority contractors, but make it clear that the M/WBE program is a reality, and will be enforced. (A central location in or near the Mayor's Office makes this point.) Processes for settling prime/subcontractor disputes, perhaps through an Ombudsman's office, should be implemented.

MONITORING AND ENFORCEMENT

Certification

Unanimously, those experienced with M/WBE programs stress the importance of effective procedures for certifying minority contractors. Ownership as well as proficiency in a service or industry area should be evaluated by a central office. Ideally, the M/WBE program should require that the owner be licensed in the work to be performed under the contract. All minority contractors and subcontractors counted toward the city's minority participation goal should be certified by the city.

Project Monitoring

Desk audits and on-site project monitoring should be routinely carried out. M/WBE monitoring staff should be sufficient to investigate quickly and follow-up on every complaint. Common problems include discrepancies between subcontracting agreements and money actually paid to subcontractors. Watch for slow payment, no payment and termination of contracts. Also, be alert to collusion between prime contractors and public inspectors resulting in harassment of subcontractors, delays, and requirements that go beyond contract specifications. (6) Many programs are overseen by Minority Business Development Commissions, whose membership has contracting expertise, but no current interest in city contracting.

Compilation Of Data

Collect contracting data on a frequent, regular basis, including: the number of contractors invited to bid on city-sponsored projects; the number of responses, the number of M/WBE contractors invited to bid, and the number of responses; the dollar amount of contracts let to M/WBE firms competitively and non-competitively; the dollar amounts let to all small businesses; total contracting dollars. File annual reports to the oversight body, the Mayor and City Council.

Cities must be prepared to interrupt projects or contracts for non-compliance with M/WBE commitments. Contractors should be held to the detailed good faith requirements set down in the contract. M/WBE track records, for both majority- and minority-owned firms, should be used as a measure of suitability for future contracting opportunities. Contractors who are not legitimate M/WBEs should be quickly de-certified.

AD HOC PROGRAMS

Undoubtedly the premier ad hoc agreement linking minority businesses (including women-owned businesses) to a large development project is Miami's Bayside Center. Although the City of Miami now has a formal minority business program, its ordinance was enacted after the Bayside Minority Participation Agreement with the developer, The Rouse Company, was finalized. The agreement is comprehensive, and sets minority participation goals at:
50 percent of all construction jobs;
35 per cent of the total construction contract to minority contractors;
50 per cent of the number of spaces to be leased held for minority enterprises;
75 per cent of all tenant hiring.

Bayside, a retail-restaurant-entertainment complex with over 160 tenants, opened in April 1987 having reached its goal of 50 per cent minority tenants (approximately half were Black, half Hispanic). Today, approximately 49 per cent of the tenants are minority-owned businesses, according to Rouse management. While all are not original tenants, turnover is not measurably higher than for non-minority businesses.

The success of this effort is owed to factors that parallel those that make formal programs work:
Coordinated, long-term commitment by the City, community groups and financial institutions;
Sufficient financing packaged so as not to seriously burden new businesses;
Determined outreach to the targeted communities;
Careful screening of M/WBEs;
Technical and managerial assistance to new business owners.

The Rouse Company made available $4 million in cash allowances for M/WBEs who were to be Bayside tenants; the City and County provided $1 million each for loans under terms requiring a match from Rouse. Six local banks also made loans to Bayside tenants. A key provision, based upon Rouse experience with earlier projects, delayed repayment of M/WBE loans for three years. At that time, debt service is to be paid out of 50 per cent of cash flow. SBA and commercial loans usually require immediate servicing, based upon 100 per cent of cash flow. (Only one tenant received financing from the SBA.) Rouse managers believed these requirements assured that new businesses would not be "overloaded" by debt service, and profit incentive would be maintained after three years, because all cash flow would not be meeting debt.

A Black accounting firm was retained to package financing, with Rouse reviewing financial packages for tenants to assure their workability based upon marketing projections.

According to Jim Dausch, of The Rouse Company, the project's minority participation success was the result of "100 to 150 points of light." Community leaders brought banking executives into the process; minority business associations, civil rights organizations, the community college and the City recruited and trained new business owners. Dausch believes that "while the financing is important, getting people to the financing is tough, and is the key." (7)

Also, the Minority Agreement provides for the establishment of a Foundation to receive 10 per cent of all revenue to Rouse from the Bayside project. The foundation will support minority business education and development. Until profit is realized, Rouse will fund the Foundation at $100,000 per year. The Mayor, City leaders and community organizations, including ACORN, were determined that Black and Hispanic businesses and individuals benefit from the development to the greatest extent possible. The City, in selecting a developer, gave serious consideration to applicants' track records with minority construction contractors and tenants. The Rouse Company's experience in earlier redevelopment projects had given the developer an understanding of the scope of services and the degree of commitment necessary to aid minority businesses. Earlier efforts to assure minority participation in similar projects had been disappointing. The commitment of the community, City, County and developer to the Minority Participation Agreement, and the talent and resourcefulness of the Bayside tenants, made this project far more effective than any other of its magnitude.

TECHNICAL ASSISTANCE PROVIDERS

MINORITY BUSINESS ENTERPRISE LEGAL DEFENSE AND EDUCATION FUND, INC.
3001 I Street, N.E., Suite 200
Washington, DC 20002
(202) 543-0040

MBELDEF, founded and chaired by former Congressman Parren J. Mitchell, advocates on behalf of minority businesses in judicial, administrative and legislative arenas; and researches and evaluates federal, state and local programs relevant to minority enterprises. Franklin M. Lee, MBELDEF Chief Counsel, offered many of the recommendations listed above.

THE NATIONAL ASSOCIATION OF MINORITY CONTRACTORS
806 15th Street, N.W., Suite 340
Washington, DC 20005
(202) 347-8259

NAMC's membership includes general contractors, subcontractors, construction managers, manufacturers, state and local agencies, technical assistance providers. Chapters are located across the country. NAMC can provide guidance in advocating for, drafting and implementing an MBE program.

CHAPTER IV: MINORITY AND WOMEN ENTERPRISE DEVELOPMENT
APPENDIX B: NOTES

1. Interview with Franklin M. Lee, Minority Business Enterprise Legal Defense and Education Fund, Washington, DC, 13 September 1988.

2. U.S. Conference of Mayors, 1986 National City Profiles: Report on Minority Enterprise Development Programs (Washington, DC: U.S. Conference of Mayors, 1987), p. 3.

3. Franklin M. Lee, Minority Business Enterprise Legal Defense and Education Fund, "Pending Litigation and On-Going Investigations," Memo to Parren J. Mitchell, Chairman, MBELDEF Board of Directors. Washington, DC, June 1988, p. 1.

4. Franklin M. Lee, Minority Business Enterprise Legal Defense and Education Fund, "Pending Litigation and On-Going Investigations," Memo to Parren J. Mitchell, Chairman, MBELDEF Board of Directors. Washington, DC, June 1988, pp. 7-8.

5. Interview with James Dausch, The Rouse Company, Columbia, Maryland, 11 November 1988.

6. Interview with Franklin M. Lee, Minority Business Enterprise Legal Defense and Education Fund, Washington, DC, 13 September 1988.

7. Interview with James Dausch, The Rouse Company, Columbia, Maryland, 11 November 1988.

CHAPTER IV: MINORITY AND WOMEN ENTERPRISE DEVELOPMENT APPENDIX C: DOCUMENTS

1. Massachusetts Minority Business Development Executive Order No. 237; sets forth policies and standards, 7 pgs., $4.00.

2. City of Houston

a. Ordinance 84-1309 Promoting Opportunities for Minority and Women Business Enterprises; sets forth policies, standards and definitions, 13 pgs., $7.50.

b. General Instructions to Contractors re Affirmative Action & Contract Compliance, 3 pgs., $2.50.

c. Certification Documents, 9 pgs., $7.50.

3. City of Miami Minority Participation Agreement with Bayside Center Limited Partnership; describes the terms and implementation steps, 19 pgs., $10.00.

All of these documents are available from Community Information Exchange.

CHAPTER V:

HOUSING TRUST FUNDS[1]

Linkage programs are often synonymous in people's minds with housing trust funds. But, as this manual explains, housing trust funds are only one community benefit that can be designed to tap the wealth flowing from for-profit development. (And, in turn, linkage exactions are only one of the many sources that can provide capital for a housing trust fund.)

Housing trust funds are permanently established pools of capital, generating regularly renewable sources of revenue, that are dedicated to the production of affordable housing for low- to moderate-income people. In addition to revenue generated from linkage programs, housing trust funds can be capitalized from real estate transfer taxes, proceeds of the sale of public land, state appropriations, offshore oil drilling fees, and many other sources.

BACKGROUND

Large-scale office and commercial development increases the demand for housing, from the people working in the new jobs created by those businesses as well as in the secondary industries that spring up to serve them. This in turn puts a severe pressure on the city's affordable housing. The rationale, then, is that the developers generating this adverse impact have a responsibility to mitigate it.

The housing trust fund strategy was pioneered by San Fransisco in 1981. In San Fransisco's program, as in all others now in place across the country, the developer is given the alternative of either building affordable housing units himself, contributing to the financing of another project (usually undertaken by a nonprofit development corporation), or paying a fee into the housing trust fund.

Some programs are mandatory. Developers

1 In keeping with the purpose of this manual, this chapter focuses on the way linkage programs can be used to establish housing trust funds. For a more complete discussion of housing trust funds in all their combinations and permutations, read the three publications produced by the Housing Trust Fund study project, under the direction of Mary Brooks, described in Appendix A of this chapter. Much of the information in this chapter is drawn with permission from Ms. Brooks' findings, which we acknowledge with appreciation. We thank Maureen Gara for her research contributing to this chapter.

of major properties are required by legislation to contribute in exchange for approval of their projects. Less strict are the programs which also call for the direct or indirect creation of lower income housing, but on a voluntary basis (as in Jersey City's program, described below). The most lenient approach, of which Seattle is an example, involves granting special development rights, such as density bonuses (e.g., permitting developers to produce more square footage of building per acre than usual) or streamlining the permit process, to developers who develop or financially assist affordable housing initiatives or contribute to a housing trust fund.

The contribution is related to the estimated negative impact of the development. In mandatory and in some voluntary programs, there is a pre-determined formula that calculates the amount of the contribution based on the size of the development. Some programs involve a case-by-case negotiation between the developer and the city.

SETTING

Linkage programs work best in areas such as San Fransisco, Boston, and Jersey City, where the commercial real estate market is strong, and where developers involved in potentially lucrative projects would be relatively unlikely to withdraw from the market.

In addition to a strong development climate, the political climate has to be right as well. A strong leadership is needed, best played by a well-respected public official who acknowledges linkage as a viable strategy. The mobilization of a public constituency large, strong, and vocal enough to gain recognition and acceptance is also key.

IMPLEMENTATION: Mandatory Programs

Legislation

Housing trust funds are generally established through an ordinance or legislation passed by a city or county council or state legislature. The legislation dedicates a revenue source — for instance, developer exactions when linkage programs are being used for this purpose; and establishes the fund as a separate and distinct entity which can receive and disburse funds and defines its purposes and operation.

If a municipality is setting up a housing trust fund, it must have state authorization to undertake such collection activities.

Fund management/administration

A separate account is usually established into which the housing trust fund monies are deposited. This serves the purpose of keeping the funds separate from other revenue and prevents their use for other programs.

Sometimes the funds are transferred directly from the developer to the sponsor of the housing units.

Often the responsibility for the administration of a fund is shared by more than one agency in a jurisdiction. For instance, in San Fransisco, the Planning Department interfaces with developers and applies the formula while the Mayor's Office of Housing and Economic Development reviews proposals for project funding. In Boston, the Boston Redevelopment Authority reviews development proposals and holds hearings. When they are approved, the City's Finance Department collects the fee and deposits it in the Neighborhood Housing Trust and later disburses it for affordable housing projects under the direction of the City's Community Development Agency.

Advisory Boards

Several Housing Trust Funds have established outside review boards, usually appointed by the mayor or governor. If the board's representation is broad enough, including not only public and business sector leaders but also housing advocates and community leaders, this body can provide balance and political support to the program.

Establishing the formula

Most mandatory formulas are based on local studies which estimate the housing demand that will be generated based on the size of the proposed development, the number of persons to be employed there, and a projection of their

incomes, Then a specific requirement per square foot of proposed commercial or office space is determined. The requirement includes a deadline.

The establishment of a standard, replicable formula can assure developers and housing advocates alike that a fair deal is being struck.

Legal Issues

As discussed in Chapter II, Legal Issues, the more direct a connection, or "nexus", can be shown between the project impact and the exaction paid to mitigate that impact, the more solidly grounded in legal precedent the linkage program will be.

This may be accomplished by collecting up-to-date, comprehensive quantitative data, showing the extent of the impact of the development, the need it generates, and the deficit of public resources to address that need. The formula used should be documented; the ordinance should delineate the public purpose served and all the requirements of the program; the funds should be deposited in a separate account; and equitable guidelines should govern their disbursement.

IMPLEMENTATION: Voluntary Programs

In many localities, linkage trade-offs for affordable housing purposes have been worked out on an ad hoc, case-by-case basis with developers. The draw-back of this approach is, that it is susceptible to political influence and circumstantial considerations. Community-based organizations may have a hard time gaining a voice in these negotiations, and accountability becomes hard to measure.

Legislation and Legal Issues

Most cities are granted the authority by their state to provide density bonuses, zoning changes and other concessions desirable to developers. Therefore, there is no need for additional action to institute an ad-hoc negotiation program for trade-offs.

Establishing the Formula or Guidelines

Since in some localities there may be no set guidelines for negotiating trade-offs, and since even in places where guidelines exist, they may not mandated, there is no guarantee that the same measures will be used from deal to deal. The problem is measuring the relative value of optional contributions in relation to the bonuses allowed the developer. Without a formula, it is difficult to reach comparable agreements where communities receive benefits consistently and where developers are treated with uniform equity.

Furthermore, private developers usually have more experience in negotiating deals than do public sector officials, so the community may be at a disadvantage at the outset.

However, ad hoc linkage negotiations can work when the city has a will to make them work and the developers are willing to participate because their profits are still advantageous and they perceive that the overall betterment of the community is advantageous as well. Jersey City is an excellent case in point. The city official in charge calls his program, which applies a formula uniformly to all participating projects, "a very mandatory, voluntary program."

Seattle's voluntary program allows a developer to increase the size of a commercial project by purchasing the development rights from a low-income housing structure anywhere downtown. Funds from the sale of development rights are used to purchase, rehabilitate and maintain affordable rents.

MONITORING

Generally there are annual formula reviews built into mandatory linkage programs.

The administering agency may enforce agreements through the collection of penalty fees or refusal to issue permits for different phases of the project.

CASE EXAMPLE: JERSEY CITY'S AFFORDABLE HOUSING LINKAGE PROGRAM

Jersey City's voluntary program is based on suggested guidelines and not on ordinances or

legislation. However, any developer who consistently ignores the guidelines can expect very little cooperation from the city on clearances required for his projects.

The guidelines offer developers of large, expensive residential projects three options:
1) Set aside 10% of the units for low- or moderate-income families;
2) Build or rehab a number of units equal to the 10% on another site in the city (on land provided by either the developer or the city); or
3) Contribute cash to the city-managed housing trust fund.

Developers building large office buildings rather than residential projects are expected to provide one affordable apartment unit for each 2,200 square feet of office space in excess of the first 100,000 square feet. This formula is similar to that used by the Boston and San Fransisco mandatory linkage programs.

Because the program depends on project-by-project negotiations, there is some variability among the contributions, reflecting the specific economics of some of the projects, but affording the city flexibility to devise innovate affordable housing contributions.

For more information, contact:

Rick Cohen, Director
Department of Housing & Economic Development
26 Journal Square
Jersey City, NJ 07306
206/547-5071

CHAPTER V: HOUSING TRUST FUNDS
APPENDIX A: RESOURCES

READINGS

Developing Housing Trust Funds, by Mary B. Brooks, is a guide for communities considering the establishment of a HTF. Based on her nationwide survey, the author describes in detail how a HTF works, various models for its administration, including fund management, and a detailed examination of the many actual and potential sources of revenue to capitalize a HTF. Published by the Center for Community Change, 1000 Wisconsin Ave., NW, Washington, DC 20007; free to community groups; $10 for other non-profit and public agencies; $25 to all others. Two other publications in this series are a *Survey Report* and *A Guidebook for Neighborhood Organizations Involved in Housing Trust Funds.*

TECHNICAL ASSISTANCE PROVIDERS

The Housing Trust Fund Project
Mary Brooks, Executive Director
570 Shepard Street
San Pedro, California 90731
213/833-4249

— An information clearinghouse on Housing Trust Funds. Will provide technical assistance and resource materials.

David Paul Rosen & Associates
451 Taurus Ave.
Oakland, CA 94611
414/654-0120

— Community development consultants specializing in technical assistance to start-up Housing Trust Funds.

CHAPTER V: HOUSING TRUST FUNDS
APPENDIX B: NOTES

The information and guidance provided in this chapter are based upon research done by Maureen Gara, upon the publications produced by Mary Brooks and the Housing Trust Fund Project, and from the Community Information Exchange's research in preparing a newsletter issue on this topic and a chapter about Housing Trust Funds in the publication *Raising the Roof*, published jointly by the Exchange and the United Way of America.

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CHAPTER V: HOUSING TRUST FUNDS
APPENDIX C: DOCUMENTS

1. Project Mitigation Measures/Accessory Housing and Parks Program, City of Santa Monica, CA.

Sets forth requirement and formula for office developers to provide housing and public open space or contributions into a HTF. 7 pgs., $4.00.

2. Proposed Ordinance authorizing multi-family housing bonds.

Terms governing the linkage agreement between the City of Chicago's issuance of multi-family housing bonds and the contributions expected from one specific large commercial development. 9 pgs. $7.50.

3. Fair Share Plan, Jersey City, NJ.

Document describes the city's measures to preserve its existing affordable housing stock, including inclusionary zoning, anti- warehousing and other. 14 pgs., $10.00.

All above publications are available from Community Information Exchange.

CHAPTER VI:

EQUITY PARTICIPATION PARTNERSHIPS

Equity participation makes community organizations, the City, and private developers partners in a development project. The term refers to the role played by a community organization as peer and part-owner in the development. In equity participation deals, community-based groups have a direct financial stake in a project, either as investors or as developers. These deals have also been called "triangular partnerships".

Major equity participation deals are rare. Although they have served their partners and their communities well, they are likely to become even more rare. These deals require heavy infusions of public capital — nearly always, Urban Development Action Grants have been the key financing source. Congress has appropriated zero funding for UDAGs in Fiscal Year 1989. (Approximately $500 million in recaptured funds will be made available in FY89 for two final competitive rounds.)

Domingo Bueno of the Mexican American Unity Council, which has completed two equity participation deals, says, "Without public dollars, the numbers just don't work." (1) Unfortunately, community groups are looking to profit-generating efforts like these to replace already lost public dollars.

When equity participation projects succeed, they bring substantial tangible and intangible rewards to all players. Because they have that potential, they are worth exploring, with an eye on the odds.

BACKGROUND

In 1978, the first Urban Development Action Grants were made to cities, intended to foster economic development in "distressed" areas. Under the UDAG program, cities apply competitively to the US Department of Housing and Urban Development for the several-million dollar grants, then lend the money to the development project. Competition for the grants is fierce both at the local level, where projects compete for the City's sponsorship, and at the federal level, where cities compete with each other. Criteria for federal selection includes, among others, the project's public purpose and benefit to low-income communities.

As a means of demonstrating that they have met these criteria, some cities include community organizations directly in the project, either by passing the UDAG funds and other resources through the community organization to the developer (in which case the community organization serves as the lender), or by providing the community organization with property or funds that can be used as equity in the project. The former strategy permits the community group to make below-market rate loans to developers, taking the interest as

income. Use of property or funding to buy into the project is riskier, with the community organization's income depending on the long-term profitability of the project. In addition to income, these resources give the community group leverage for concessions, such as minority hiring and job training, from the developer. San Antonio, Oakland, Flint, and Los Angeles are among the cities that have involved community groups in UDAG- assisted projects.

While UDAGs are not the only source of significant public support for economic development, for the past decade they have been a key funding source for major projects. Other sources of federal support for development include grants and loans administered by the Economic Development Administration, the Office of Community Services within the Department of Health and Human Services, and the Department of Transportation. In addition, local governments subsidize development projects with bond issues, general revenues, UDAG paybacks and Community Development Block Grants (CDBG).

Private sector funding for community organizations' buy-in to a deal can come from foundations' Program Related Investments, insurance companies' social investments, and grants and loans from church organizations and revolving loan funds, among others.

SETTING

The availability of sufficient public and private financing at terms that make the development profitable is the foremost requirement for an equity partnership. In equity participation, perhaps more than any other linkage strategy, the city's role is central. It must set the conditions and requirements in which the community organization is brought in as a partner.

A community group needs political skills, clout, and the ability to negotiate and maintain working relationships with private sector developers and lenders. Technical knowledge of real estate development and financing is essential. (2) Also helpful is a track record in partnership with the private sector.

The equity participation (if the venture succeeds) creates an income stream for the community group, moving it toward greater self-sufficiency. It also gives them the opportunity to bargain for jobs and enterprise development opportunities for city and community residents. The developer benefits by having the community's support and gains financially through the favorable terms that the community group's investment offers, such as a subordinated mortgage with deferred interest payments that lets the project reach profitability more quickly.

NEGOTIATING

The community must assess the difficulty and risk of equity participation in relation to its needs. If employment, for example, is a neighborhood's goal, equity participation may not produce as many jobs as a First Source Hiring or training program requirement. As in any negotiating situation, it is critical that community leaders know what their objectives are, and what they are willing to pay for them, before sitting down to negotiate with developers. The financial value of political access and community influence are "non-cash assets" that should not be under-estimated.

Whether the relationship with the developer is one of investor or partner should be carefully scrutinized on the basis of the return on the dollar and the length of time before income is realized. Developers will be looking for multi-year deferments on the payment of interest, to facilitate payments on commercial financing. Profit from equity infusions in the project may be slow in coming. The return may be great, but it is speculative.

Intangible benefits, like intangible resources, should not be underestimated. The success of a major development project can lift a community group's reputation sky high. And solid relations with the city and private sector will be the springboard to other projects, and future funding.

CASE EXAMPLE: THE MAJESTIC PROJECT

The Mexican American Unity Council (MAUC) of San Antonio has been nationally recognized for the deal it completed with Hyatt

ten years ago. That deal involved the construction of a $37 million luxury hotel along San Antonio's waterfront. Project financing included a $6.5 million UDAG, in which MAUC participated. As thanks for its support of the project and participation in the UDAG, MAUC received a $1 million grant from the city for equity in the project. $200,000 was invested in the project, yielding a 9 per cent equity share; the $800,000 balance was loaned to the developer at 10 per cent interest, amortized over 25 years. Both dividend and interest payments were deferred for three years. MAUC also reached minority hiring, subcontracting and leasing agreements with the developer; and has been receiving $200,000 to $250,000 annual income from the Hyatt project. (3)

On November 11, 1988 MAUC closed on the Majestic Project, its second major economic development deal. The terms and circumstances of that agreement are impressive and proof both of the possibility and the difficulty of making an equity partnership happen.

The Majestic is a theater in downtown San Antonio. This project involves the renovation of the Majestic and a second downtown theater; and the conversion of two office buildings into 117 units of affordable rental housing. The $21 million project will be financed with a $10 million Certificate of Obligation issued by the City, for the purchase of the buildings, which will be leased to the developers. The balance will be made up by insurance financing, funding from various housing programs, and conventional loans (if a feasible rate can be obtained).

MAUC was approached by the two private developers planning the theater renovations, because they were interested in winning public assistance from the City and from HUD. MAUC set up a foundation to own and manage the theaters. The foundation has raised $1 million, largely from corporations. In return, MAUC will own 40 percent of the housing development, and will lease the residential buildings from the City under a 50-year lease at $1/year.

Both the housing and entertainment components of the project complement a two-year downtown revitalization project funded by a $40 million grant from the U.S. Department of Transportation. Without the link between the two projects, Domingo Bueno is convinced the project would not have been approved.

Bueno sees three critical requirements to an equity partnership:
1. Finding public dollars;
2. Assembling construction and permanent financing;
3. Capitalizing on the community organization's track record and connections.

The first two are extremely difficult to meet. And so, he says, such deals are "far and few between." (3)

Domingo Bueno
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San Antonio, Texas 78207
(512) 225-4241

CASE EXAMPLE: THE PORTALS

The Portals Project involves 2,274,200 square feet in commercial and retail development space on a site in Southwest Washington, DC. Three Title VII Community Development Corporations have formed together a for-profit corporation which has partnered with a developer to bid on the development of this site — and has won the competition to do so.

The Title VII CDCs are the Anacostia Economic Development Corporation (DC), Harlem Commonwealth Council (NYC) and the East Los Angeles Community Union (TELACU).

Both the local DC government and the Federal Community Services Administration were the essential ingredients to the forming of the new for-profit and the setting of the preconditions that made the team the winning one.

The District of Columbia has had a law on the books for several years, calling for 25% minority participation in the development of any Redevelopment Land Authority or city property put out for public bid. The law also calls for 25% minority participation in contractors working on development projects. (These levels have subsequently been raised to 35%.)

It was this DC requirement that laid the

groundwork for the next step. Al Hopkins, executive director of the Anacostia Economic Development Corporation (AEDC), met directly with DC's mayor, to discuss a way to implement this law; the mayor was eager to see it happen.

At the same time (under leadership previous to Hopkins) AEDC had been put on probation by its source of Title VII funds, the Community Services Administration, to improve its management. CSA agreed to continue to fund AEDC on the condition that the District of Columbia would find a way to fund it as well.

CSA decided that the way to implement this step would be for AEDC to join up with other Title VII CDCs that had good track records, and selected TELACU and Harlem Commonwealth Council for this purpose. They were advised by CSA to form a for-profit corporation together, which they did; the corporation is called Eastcoast Development Corporation. Once that unified for-profit was formed, CSA awarded it its initial capitalization of $1 million.

Eastcoast Development Corporation then joined forces with a private developer, Western Development Corporation, to bid on the Portals Project RFP. Seven DC minority leaders serve as limited partners in the venture. The RFP included of course the requirements for minority participation consistent with the DC law, as well as requirements for community participation. (Though not selected in the first round, the development group that had been selected could not sustain its offers during preliminary negotiations; therefore, another round of bids was held, which the Eastcoast-Western Development collaboration did win.)

The Portals Project will generate a stream of income for the Eastcoast Development Corporation over time (the project is being developed in four phases). In the interim, Eastcoast serves as general partner and will generate funds from the management fees.

For more information, contact:

Anacostia Economic Development Corporation
2041 Martin Luther King Jr. Ave.
Washington, DC 20020
202/889-9507
Al Hopkins, Ex.Dir.

CHAPTER VI: EQUITY PARTICIPATION PARTNERSHIPS
APPENDIX A: RESOURCES

READINGS

1. *Balancing Downtown and Neighborhood Development: A Study of Two Triangular Equity Partnerships* by Mtangulizi Sanyika. This article reviews the framework of two separate downtown development projects, discusses community group participation in the deals, and offers strategy advice to community organizations considering equity participation. 7 pages. Available from the National Economic Development and Law Center.

2. *A Guide to Triangular Partnerships*, by Kay R. Scrimger, 1983. This manual reports on a demonstration program that established triangular partnerships in six cities, and provides guidance to replicating the process; case studies are included. 68 pgs.; free; available from the U.S. Conference of Mayors, 1620 I St., NW, Washington, DC 20006.

TECHNICAL ASSISTANCE PROVIDERS

NATIONAL ECONOMIC DEVELOPMENT AND LAW CENTER
1950 Addison Street
Berkeley, California 94704
(415) 548-2600

See description in Appendix A, following Chapter I.

CHAPTER VI: EQUITY PARTICIPATION PARTNERSHIPS
APPENDIX B: NOTES

1. Interview with Domingo Bueno, Mexican American Unity Council, San Antonio, Texas, 11 November 1988.

2. Mtangulizi Sanyika, "Balancing Downtown and Neighborhood Development Part III: A Study of Two Triangular Equity Partnerships", Economic Development & Law Center Report (Spring 1987): 30.

3. Interview with Domingo Bueno, Mexican American Unity Council, San Antonio, Texas, 11 November 1988.

CHAPTER VI: EQUITY PARTICIPATION PARTNERSHIPS
APPENDIX C: DOCUMENTS

1. District of Columbia's Prospectus for the Portals Parcels

Request for Proposals to developers, including DC's requirement for minority participation in the entire development process, i.e. planning, ownership, construction, occupancy, and management. 9 pgs., $7.50.

This document is available from the Community Information Exchange.

CHAPTER VII:

COMMUNITY CONCESSIONS IN SOCIAL & HUMAN SERVICES

In communities across the country, city agencies and community organizations have successfully applied a linkage approach to obtain concessions from developers for many different kinds of community benefits. In Seattle, the city has set up a voluntary linkage program to provide day care facilities; in numerous cities, developers have agreed to create community parks and recreation facilities; a Washington, DC developer has plans underway to help restore an historic neighborhood theater. In Boston, when a huge commercial redevelopment was slated for the Roxbury neighborhood, it generated widespread opposition; eventually a community coalition was granted power of eminent domain to control its own revitalization.

The following brief case examples demonstrate the innovative ways in which linkage can be used.

CHILD CARE

Three years ago, San Franciso added a $1 per square foot fee for child care to the cost of development projects in excess of 50,000 square feet. The fund has collected no revenue to date, because no project begun since the fee was imposed has been completed. Fees are imposed before the building is put in service.

The City expects to publish a Request for Proposals from community organizations for administration of the program. The child care fund will disperse monies in the form of vendor vouchers. A portion of funds may be set-aside to develop new child care facilities on development sites or in neighborhoods immediately surrounding major development. Developers may establish child care facilities rather than pay the fee.

Contact: Jon Pon
Program Manager
Mayor's Office of Community Development
City and County of San Francisco
100 Larkin Street
San Francisco, CA 94102
(415) 554-2960

TECHNICAL ASSISTANCE FOR NEIGHBORHOOD DEVELOPMENT

The City of Chicago has established a voluntary program through which developers make commitments to provide technical assistance to community organizations involved in neighborhood development projects. Informal agreements for hours to be contributed to the program are made when development projects are reviewed for approval by the Department of Planning.

The program was introduced in Mayor Harold Washington's 1984 Development Plan,

and has made available over 3000 hours of technical assistance to non-profit groups. The City's Department of Planning issues Requests for Proposals from community groups, who can receive as many as 125 hours of technical assistance. The Department intends to release two RFPs annually. A example of assistance provided through the program is a small theater group looking to purchase and develop a theater or a building that can be converted into a theater. The group has been paired up with a downtown developer who is chairing the search process, and who has assisted the group in negotiations for purchase and financing.

Contact: Maria Ayala
City of Chicago Department of Planning
121 North LaSalle, Room 1006
Chicago, Illinois 60602
312/744-0602

JOB TRAINING

In 1986 the City of Boston enacted an ordinance establishing a job training fund from a $1 per square foot fee exacted on all commercial development in excess of 100,000 square feet. One-half of the fee is paid when the building permit is issued, the second half one year later.

Fees are administered by the Neighborhood Job Trust, which has received over $1 million in calendar year 1988. (First payments were received in 1987.) Awards are made in two categories: Workplace Education and Occupational Skills Training. Workplace Education projects provide adult literacy training for workers at their job-sites. Occupational Skills Training projects will provide a variety of training programs for unemployed and underemployed workers. An annual Request for Proposals is planned.

Developers, rather than paying the fee, may submit plans for training projects to the Trust.

Contact: Ann D. Woodward
Deputy Director/Planning
Mayor's Office of Jobs and Community Services
43 Hawkins Street
Boston, MA 02114
(617) 723-1400

CHAPTER VII: COMMUNITY CONCESSIONS IN SOCIAL & HUMAN SERVICES
APPENDIX C: DOCUMENTS

1)a. San Fransisco Office-Hotel Child Care Program. Statement by Nancy G. Walker, President, Board of Supervisors, City and County of San Fransisco.

Sets forth the rationale behind the ordinance, summarizes its features, and explains its objectives, 5 pgs., $4.00.

b. San Francisco Planning Code, Section 165. Child Care Plans and Child Care Brokerage Services.

Document provides definition of terms, describes requirements and formula, and explains the Affordable Child-Care Fund and its workings. 6 pgs., $4.00.

2)a. Boston Neighborhood Jobs Trust.

Ordinance Establishing the Neighborhood Jobs Trust; sets forth the rationale behind the ordinance. 6 pgs., $4.00.

b. Declaration of Trust.
Establishes the Trust, its purpose, the distribution and use of principal and income controlled by the Trust, composition of the Board of Trustees, their responsibilities, and other fiduciary and legal matters. 24 pgs., $15.00.

3) Community Participation Plan, Portals Development Associates. Offers numerous community benefits, as part of its bid to be selected as developer of the Portals site, in Washington, DC; these benefits include building a community theater, day care center, meeting and office space for community groups, and a community athletic facility; sets forth the development teams's plan to provide employment and training benefits through funding a summer youth employment program and through a First Source Hiring arrangement with the city., 15 pgs., $10.00.

All these documents are available from the Community Information Exchange.

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